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Article 2

Introduction: The Challenge of 2020: Preparing a Civil Justice Reform Agenda for the Coming Decade: Fourteenth Annual Clifford Symposium on Tort Law and Social Policy

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INTRODUCTION

*Stephan Landsman**

This past year's Clifford Symposium was unusual in a number of ways. Most significantly, it featured the contributions of a larger than usual group of distinguished judges, including Jack Weinstein, Shira Scheindlin, James Holderman, and Earl Johnson, Jr., as well as those of a similarly distinguished body of practicing lawyers, including the Special Master of the September 11th Victim Compensation Fund, Kenneth Feinberg, former Presidents on the American Bar Association, and Chairs of its Litigation Section. The aim in bringing these stars of bench and bar together with distinguished academics was to spark the highest level discussions possible about the issues the legal profession will face over the coming decade and what steps we can take now to meet the challenge of 2020. The responses of all our authors are thoughtful, provocative and, I believe, can help us fashion a reform agenda for the coming decade.

The Symposium begins with a fascinating piece by Professor Richard Marcus.¹ It pushes us to think about the impact of rapidly changing electronic technology on the practice of law. It does not suggest that lawyers will be rendered obsolete any time soon but does underscore just how significant an impact technology is having as lawyers' lives speed up, the electronic law office becomes our everyday environment, and practice is profoundly altered. Another aspect of technological change is addressed by Mary Rose and Shari Diamond.² These two distinguished social scientists explore the impact of the rise of videotaped evidence and trial records. They focus us on the ability of technology to capture things other than what is spoken on the witness stand. Their assessment, based on a study of actual jury deliberations in Arizona, is that the impact of "offstage behavior" is not a major worry and, perhaps more significantly for the future of trial practice, that video presentations of testimony offer a promising resource for trial.

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1. Richard L. Marcus, *The Electronic Lawyer*, 58 DEPAUL L. REV. 263 (2009).

2. Mary R. Rose & Shari Seidman Diamond, *Offstage Behavior: Real Jurors' Scrutiny of Non-Testimonial Conduct*, 58 DEPAUL L. REV. 311 (2009).

Judge James Holderman and Ann Walls³ focus our attention on jury trial reform and remind us that younger jurors are now bringing into the courtroom expectations formed by the new technologies all around us. This means that we will have to work toward the development of more interactive and engaging trial practices if we wish to keep the jury trial effective. In his article, Professor Richard Lempert⁴ draws our attention to another sort of reform—that designed to address major disaster. His analysis of our response to a series of recent major calamities suggests that we need to rethink our approach to such challenges and not simply rely on our traditional systems of adjudication and welfare assistance. Models like the September 11th Victim Compensation Fund and other “no fault” schemes may provide a promising alternative if they can be humanized by providing claimants a sense that their voices will be heard. Yet another sort of reform is considered by Earl Johnson, Jr.⁵ Drawing from European experience, he persuasively argues for reform in the way the United States provides civil legal services to the poor. He underscores the importance of a multi-pronged approach that includes wider use of aggregation mechanisms, better assistance to pro se litigants, a movement toward inquisitorial approaches in specialized areas like family law, and wider use of lay advocates.

The distinguished legal scholars Richard Abel and Lawrence Friedman then provide us “big picture” overviews of two significant issues in the coming decade, the scope of litigation and the selection of members of the judiciary. Professor Abel⁶ does not think it is feasible to predict what civil litigation will be like in a decade, but he outlines the critical matters that will need to be scrutinized, including a host of items in our social environment (demography, social relations, economic relations, government functioning, and technology) and our legal environment. He provides us with an invaluable taxonomy for measuring change. Professor Friedman⁷ casts his historian’s eye over the past to help us think through where judicial selection mechanisms may be headed. He underscores America’s ongoing struggle with the specter of judicial partisanship. He reminds us that the election mech-

3. Chief Judge James F. Holderman & S. Ann Walls, *As Generations X, Y, and Z Determine the Jury’s Verdict, What is the Judge’s Role?*, 58 DEPAUL L. REV. 343 (2009).

4. Richard Lempert, *Low Probability/High Consequence Events: Dilemmas of Damage Compensation*, 58 DEPAUL L. REV. 357 (2009).

5. Earl Johnson, Jr., *Justice for America’s Poor in the Year 2020: Some Possibilities Based on Experiences Here and Abroad*, 58 DEPAUL L. REV. 393 (2009).

6. Richard Abel, *Forecasting Civil Litigation*, 58 DEPAUL L. REV. 425 (2009).

7. Lawrence M. Friedman, *Benchmarks: Judges on Trial, Judicial Selection and Election*, 58 DEPAUL L. REV. 451 (2009).

anism was introduced to combat partisanship and that whatever replacement mechanism we may consider is likely to encounter the same political and social pressures.

The Symposium concludes with short pieces by Kenneth Feinberg, Shira Scheindlin, and Jack Weinstein. Mr. Feinberg's article⁸ emphasizes the importance of litigation transparency as we think about reform. He demonstrates its value in an array of settings along with the need to engage participants both in the process of fashioning procedure and in having an opportunity to have a say before their adjudicator. Judge Scheindlin⁹ reminds us of the importance of expanding the scope of the work of special masters in the future if we hope to succeed in managing an ever more diverse and challenging caseload. Judge Jack Weinstein¹⁰ concludes the Symposium in grand style, reminding us of the enduring importance of democracy and the importance of preserving it both in the electoral setting and in our reliance upon juries. He urges us, as indeed does the whole Symposium, to expand access to our courts and respect the values it represents.

8. Kenneth Feinberg, *Transparency and Civil Justice: The Internal and External Value of Sunlight*, 58 DEPAUL L. REV. 473 (2009).

9. Shira Scheindlin, *We Need Help: The Increasing Use of Special Masters in Federal Court*, 58 DEPAUL L. REV. 479 (2009).

10. Jack B. Weinstein, *The Lincoln Index of Government Of, By, and For the People*, 58 DEPAUL L. REV. 487 (2009).

